IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

-

WRIT PETITION NO : 18813 of 1994

Between:

Visakhapatnam Urban Dev. Authority Udyog Bhavan Complex, Visakhaptnam, rep. by Secretary

..... PETITIONER

AND

1 The Inspector Gen. of Registration & Stamps A.P., Hyderabad
2 The District Registrar, O/o The District Registration, Visakhaptnam
3 The Sub-Registrar O/o The District Registration, Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, Order or Direction more particularly a Writ of Mandamus, declaring the action of the 1st respondent in issuing the proceedings Memo No.G1/24499/94 dt: 16-9-94, as illegal, arbitrary and without jurisdiction and direct the 2nd & 3rd Respondents to register the 'Deed of Cancellation of Sale Deeds' presented by the petitioner herein, and pass

Counsel for the Petitioner: SMT.SUMALINI REDDY

Counsel for the Respondent No.: GP FOR REVENUE

The Court made the following :

ORDER:

This writ petition is filed seeking writ of Mandamus to declare the action of the first respondent in issuing the proceedings Memo No.G1/24499/94, dt. 16-9-1994 as illegal, arbitrary and without jurisdiction and to direct the second & third respondents to register the 'Deed of Cancellation of Sale Deeds' presented by the petitioner.

2. The brief averments made in the affidavit filed in support of the writ petition are as follows:

It has been stated that the petitioner Visakhapatnam Urban Development Authority (for short 'V U D A' or 'Authority') was constituted under the Principal Act of A.P. Urban Areas (Development) Act 1975 (for short 'the Act') for providing and creating the development of areas notified in accordance with rules and regulations framed there under. The Act further provides under Sections 3, 5 & 19 power to acquire, hold, dispose of and also contract for property both movable and immovable.

It is further stated that the Government of Andhra Pradesh under the powers conferred under the Act issued 'The Visakhapatnam Urban Development Authority Allotment, Management and Sale of Plots Regulations' vide G.O.Ms.No.113, M.A. dt.24-2-1984(for short 'said G.O.') which guides and governs the action taken by V U D A in allotting and registering plots to the general public and the said G.O sets forth the Regulation which shall apply, apart from allotment by V U D A to cancellation of the same also. Under the scheme set out in these regulations, Sub-Regulation (V) of Regulation 21 deals with the aspect when the allotment of site shall be cancelled and Sub-regulation (iv) of Regulation 22 deals with the aspect of the consequences follow the cancellation of the allotment. It is further stated that any such allotment and the cancellations also governed by the same Regulations.

It is also stated that the first respondent in the impugned proceedings issued

instructions to all the Registrars not to register cancellation deed for sale deed without obtaining consent of the original purchaser in the form of affidavit. But it does not whisper as to under what power and authority under the Registration Act it was issued. It is further stated that the petitioner Authority has been created by a statute and governed by the regulations and has independent and unfettered power to unilaterally cancel the allotments after complying duly with principles of natural justice, if such allotments fall through by defaults, such deeds of cancellation of sale deed executed and registered when presented before the 2nd & 3rd respondents cannot be refused to be registered in view of the impugned memo. It is always open to the original allottee, who is a defaulter, to challenge the order or action of the petitioner Authority in canceling the allotment, if it is done without any power or jurisdiction. Since the impugned memo virtually handicaps the functioning of the VUDA more particularly jeoparadises the development and growth of the areas as these allotments comes to a stand still as fresh allotments and the registration of the same will be delayed unnecessarily. Hence, the writ petition.

3. Contesting the writ petition, the first respondent filed counter affidavit stating that the proceedings in question have been issued as per the orders of the Government issued in Memo No.37093/Regn.I(1)/94-4, Revenue (Registration –I) Department dt.12-8-1994 and that the first respondent is empowered under Section 69(i)(j) read with Section 69(2) of the Indian Registration Act, 1908 to formulate procedure for registration of documents in Sub-Registrar Offices. The action of the petitioner in canceling the sale deed is without sufficient interest, title and right which amounts to fraud on registration. The grounds urged in the petition are neither just nor proper and hence the writ petition is not maintainable and sought to dismiss the same.

4. A separate additional counter affidavit has been filed on behalf of the third respondent stating that pursuant to the judgment dated 11-10-2004 in W.A.No.972 of 2004, the Government issued a Memo No. G1/4838/04, dt. 9-11-2004 and in view of the same the document presented by the petitioner will be processed for registration duly following the provisions of Registration Act.

5. Heard the counsel on either side.

6. When the matter has come up for hearing, the learned Government Pleader

appearing for the respondents has submitted that he filed additional counter enclosing a copy of the memo issued by the Government in Memo No. G1/4838/04 Dated 9-11-2004. The learned Government Pleader also submitted that the said memo has been issued in pursuance of the judgment dated 11-10-2004 in W.A.No.972 of 2004, wherein the issue in the present writ petition was covered.

Following the above judgment in the Writ Appeal and also in pursuance of the issuance of the latest Memo dated 9-11-2004, which remain unchallenged till today, the writ petition is allowed.

_____

Justice T. Meena Kumari

Dt. 23-12-2004

Kvrk

That Rule Nisi has been made absolute as above

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Thursday, the Twenty Third Day of December Two thousand and Four

To

1 The Inspector Gen. of Registration & Stamps A.P., Hyderabad
2 The District Registrar, O/o. The District Registration, Visakhaptnam
3 The Sub-Registrar O/o The District Registration, Visakhapatnam

4. Two CCs to G.P for Revenue, High Court Buildings, Hyderabad(OUT)

5. Two CD copies.

THE HON'BLE SMT JUSTICE T. MEENA KUMARI

WRIT PETITION NO. 18813 OF 1994

23rd DECEMBER 2004